Supreme Court, U.S.
FILED

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No.

UNITED STATES SUPREME COURT
October Term, 1998

ELIZA DAVIS OLIVER ESTATE
by its Personal Representative,
T. CARLTON RICHARDSON,
Petitioner,

vs.

STATE OF FLORIDA, et al.,
Respondent.

On Petition for Writ of Certiorari to the
U.S. Court of Appeals, 11th Circuit

PETITION FOR WRIT OF CERTIORARI and APPENDIX

Eliza Davis Oliver Estate
T. Carlton Richardson, P.R.
Petitioner *Pro Se*
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QUESTIONS FOR REVIEW

Between 1885 and 1971 the State of Florida enforced apartheid in its public schools by segregating students descended of African slaves (blacks) from Caucasians (whites). During this era of educational apartheid called "segregation", Florida authorized and its school boards paid unequal salaries and provided othc. unequal employment terms and conditions to its black teachers. Economic inequality continued to exist between black and white teachers when Florida finally integrated its public schools in 1971 as ordered by this Court having delayed full compliance for over seventeen (17) years since first mandated by this Court in 1954. Presented for review are the following questions:

I.

Whether in a civil rights action brought on behalf of an aggrieved black teacher's estate, the statute of limitations immunizes the State of Florida and its School Boards where they have failed to equalize the economic statuses in compensation and other terms and conditions of employment between their black and white teachers thereby breaching their "affirmative duty" to comply with mandates of this Court to "eliminate all vestiges of past" *de jure* and *de facto* segregation in personnel matters which the 13th and 14th Amendments requires; and if not, is Florida immunized by the 11th Amendment?

II.

Whether the district court in dismissing this case "with prejudice" under F.R.Civ.P. 12(b)(6) acted in excess of jurisdiction and departed from the normal course of procedure when it (a) failed to follow this Court's "accepted rule" in accessing the legal sufficiency of the complaint by disregarding causes of actions reasonably raised in the complaint, (b) made factual determinations in rejecting the petitioner Oliver Estate's equitable estoppel counter-defense to the defendants' use of the statute of limitations defense and (c) considered "matters outside the pleadings" without according the Estate notice and opportunity to be heard, all in violation of the Estate's due process rights?

LIST OF PARTIES

Involved in these certiorari proceedings are the following parties:

Petitioner:

Eliza Davis Oliver Estate by its
Personal Representative, T. Carlton Richardson

Respondents:

State of Florida
School Board of Washington County, Florida
School Board of Marion County, Florida
School Board of Citrus County, Florida
School Board of Hillsborough County, Florida

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DECISION FOR REVIEW

For review is the order of the 11th Circuit Court of Appeals in *Eliza Davis Oliver Estate v. Florida, et al.* entered January 13, 1999 (rehearing denied, March 9, 1999) affirming and incorporating by reference in its opinion the orders by the district court granting defendants Florida and Washington County School Board's motions to dismiss entered May 21, 1997 and denying plaintiff Oliver Estate's motion for reconsideration entered February 24, 1998. All decisions are setout in the Appendix beginning at page ii.

JURISDICTIONAL STATEMENT

Jurisdiction of the U.S. Supreme Court to review a final judgment or order in a civil case before a federal appeals court is by grant of a timely filed petition for writ of certiorari. See, 28 U.S.C. §1254(a). A petition for writ of certiorari must be filed within 90 (ninety) days of the entry of the appeals court judgment or order sought to be reviewed; or, if timely filed, the disposition of a petition for rehearing, whichever is greater. See, S.Ct.R. 13(1) and 13(3)

Petitioner files this Petition for Writ of Certiorari within 90 days as adjusted of the entry of a final order granting affirmance entered in *Oliver Estate v. Florida et al.* by the 11th Circuit Court of Appeals on January 13, 1999 [App. x]. A timely filed petition for rehearing was denied on March 8, 1999 [App. xi] thereby tolling the suspension of the 90-day filing period. Deadline for filing a petition for writ of certiorari is June 6, 1999. Jurisdiction of this Court has been properly invoked to review the final appeals court decision in this civil rights case.

STATUTORY PROVISIONS INVOLVED
(Constitution, Statutes, Rules/Regulations)

Involved in these certiorari review proceedings are the relevant portions following constitutional or statutory provisions:

I. CONSTITUTIONAL PROVISIONS

A. Art. I., Sec. 10.

No State shall ... pass any ... Law impairing the Obligation of Contracts ...

B. 5th Amd.;

... [N]or shall private property be taken for public use, without just compensation.

C. 9th Amd.;

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

D. 11th Amd.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens ...

E. 13th Amd.;

Section 1. Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

F. 14th Amd.:

Section 1. No state shall enforce any law which shall abridge the privilege and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. ***

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

II. STATUTES

A. 42 U.S.C. § 1981:

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like ... penalties ... and exactions of every kind, and to no other.

(b) For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.

(c) The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

B. 42 U.S.C. § 1982:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

C. 42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges and immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress ... .

STATEMENT OF CASE

I. FACTS

Apartheid existed in law or fact in the public schools of Florida from 1885 to 1971. All black teachers were paid unequal salaries to white teachers. Salary equalization was accomplished under federal court orders between 1940 and 1950 without payment of back salaries.[1] Because of the apartheid system black teachers suffered other economic losses in the performance of their teaching responsibilities and maintenance of their licenses to teach which required continuing education.

This Court ordered desegregation of public schools in Florida in the 1954 *Brown*[2] case to be accomplished with "all deliberate speed"[3]. After 17 (seventeen) years, in 1971 this Court ordered full integration of Florida's public schools without further delay. Throughout the apartheid era, Florida and its School Boards aggressively fought by

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[1] For example, in *Thomas v. Bd. of Educ., City of Nashville, Tenn.*, 46 F.Supp. 368 (D.C., M.D. Tenn., 1942) the black teacher plaintiff was held not entitled to retroactive salary equalization because the teacher never complained before filing suit and was paid what he bargained for. During the apartheid era, all federal judges in the South were white. While a few judges were courageous in faithfully interpreting the law relative to the dismantling of apartheid, most unfortunately were not as this case symbolizes. Judges, whatever their race or ethnicity are not insulated from the societal prejudices under which they grew-up and lived. It stands to reason that white federal judges were under tremendous social or psychological pressure to limit or restrict the legal victories blacks won during the apartheid era.

[2] *Brown v. Bd. of Education*, 347 U.S. 483, 74 S.Ct. 686, *supp. op.* 349 U.S. 294, 75 S.Ct 753 (1954)

[3] *Id.*, 349 U.S. at 299-301, 75 S.Ct. 755

"any means necessary"[4] -- indifference, neglect, malfeasance or misfeasance, intimidation, subornation of violence, deception, abusive litigation practices[5], and the like -- the dismantling of its apartheid educational system. Florida's discriminatory behavior towards its black teachers was sanctioned by it's laws, policies, practices and customs dating back to Florida's establishment as an African slave-holding territory in the early 1800s.

Against this history and tradition of opposing any attempt at rectifying the "evil" of apartheid[6], plaintiff Oliver Estate filed this civil rights action[7] to obtain restitution of the economic losses of this deceased black teacher who taught and lived most of her 91 (ninety-one) years under the "evil" system of apartheid in Florida's public education system and it's society in general. Decedent, Eliza (*nee:* Roulhac) Davis Oliver, was a second generation black teacher who taught in the public schools of Florida under four (4) county school boards between 1920 and 1973 when she retired. At the time of her death in 1995 she was still receiving retirement from Florida's teacher retirement system under her employment contracts.

At no time in Mrs. Oliver's 53 (fifty-three) year tenure of active

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[4] "Nothing in our national experience prior to 1955 prepared anyone for dealing with changes and adjustments of the magnitude and complexity encountered since then. Deliberate resistance of some to the Court's mandates has impeded the good-faith efforts of others to bring school systems into compliance. The detail and nature of these dilatory tactics have been noted frequently by this Court and other courts." *Swann v. Charlotte-Mechlenburg Bd. of Educ.*, 402 U.S. 11, *13*, 91 S.Ct. 1267, *1275* (1971)

[5] One of the litigation tactics used extensively by Florida education officials to delay the demise of apartheid era practices was piecemeal litigation in every county school district in the State. This was both costly to the private litigants and time consuming.

[6] "The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. *Segregation was the evil struck down by Brown I* as contrary to the equal protection guarantees of the Constitution. *Id.*, 402 U.S. at 15, 91 S.Ct. at 1275. (Emphasis supplied)

[7] *The Tampa Tribune* (07/12/96) reported the filing of this suit under an article titled "History of school segregation spurs suit".

service (1920-1973) did she ever receive any restitution for being treated unequally as a black teacher during the apartheid era from Florida or its School Boards. Neither did she receive restitution after she retired in 1973 or prior to her death in 1995. This civil rights action seeks restitution for the unpaid salary and other economic benefits of employment which Mrs. Oliver was unconstitutionally deprived during the contract period, 1920 to 1995, because she was black and descended from African slaves.

II. PROCEEDINGS IN FEDERAL COURT

A. Sources of Original Jurisidction.

This civil rights action was brought in the U. S. District Court for the Middle District of Florida, Tampa Division based upon the following sources of federal court jurisdiction: (1) the self-executing provisions of the 13th Amendment and the privilege and immunities clause of the 14th Amendment of the U.S. Constitution; and (2) statutory grants of jurisdiction to the district court under 28 U.S.C.§ 1331 giving "original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States"; 42 U.S.C. §1343(a)(2) giving jurisdiction for deprivation of civil rights and §(a)(4) which allows recovery of damages; 42 U.S.C. §1983 giving a cause of action for the deprivation of rights by "(a)ny person under color of" law, custom or usage; and 42 U.S.C. §1988 giving jurisdiction for proceedings in vindication of civil rights and allowing the award of attorney fees.

B. Course of Proceedings.

Copies of the relevant decisions of the district court and the appeals court panel appear in the Appendix. In the district court, two F.R.Civ.P. [Civ. R.] 12(b)(6) motions to dismiss by defendants Florida and the Washington County School Board were filed. Florida's motion claimed a bar by way of the statute of limitations and the 11th Amendment. Washington County's motion claim a bar by way of the statute of limitations only, conceding that no 11th Amendment bar would apply.

Those dismissal motions where granted May 21, 1997 without

notice, oral argument or an evidentiary hearing although the district court used information outside the record. See, Civ. R. 12(b)(6)[8] The district court held that Florida and its School Boards were immunized from the plaintiff's claim because the statute of limitations had run against Mrs. Oliver since a violation of her civil rights from

> the facts supporting the cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights. *** [And e]ven assuming (which this Court does not), as Plaintiff argues, that the wrong perpetrated upon Mrs. Oliver was continuous, permitting the tolling of the limitations period, *any continuity came to an end* in 1973 when Mrs. Oliver retired. App. iv, v. (Emphasis supplied)

The other county school Boards (Marion, Citrus and Hillsborough) specially appeared claiming insufficient service of process which was never reached by the district court since they were included in the dismissal. App. v.

On reconsideration, the district court held on February 24, 1998 that Florida was immune from suit under the 11th Amendment. App. viii, n. 1 ["The law is clear that the Eleventh Amendment precludes a suit against the state for money damages. See *Edelman v. Jordan*, 415 U.S. 651, 688, 94 S.Ct. 1347, 1358 (1974)."] The district court had previously eluded to this as an alternative ground in its dismissal order. App. iii, n. 1 [Citing *Edelman* it stated: "Although the (c)ourt does not dismiss the case on Eleventh Amendment grounds, there is little doubt such dismissal would be warranted with respect to Defendant State of Florida."] In neither of the district court's orders did it analyze the 11th Amendment immunity defense in light of "the complicated legal background of the Eleventh Amendment doctrine against which the district court's decision must be judged". See, *Gamble v. Fla. Dept. of H.R.S.*, 779 F.2d 1509, *1511-1513* (11th Cir., 1986)

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[8] Where "matters outside the pleadings" are used, a motion to dismiss "*shall* be treated as one for summary judgment ... and all parties *shall* be given reasonable opportunity to present all material pertinent to such a motion ... ." (Emphasis supplied)

However in denying reconsideration, the district court did state that it "need not explicitly respond to each and every theory advanced in the pleadings" [App. viii] in assessing the legal insufficiency of complaint in direct contravention of the "accepted rule" announced by this Court over 41 years ago in *Conley v. Gibson*, 335 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957) which the district court cites. Moreover, the district court determined that there were no "affirmative acts of inequitable conduct" [App. viii] by Florida or its School Boards, an impermissible fact-finding on a motion to dismiss without first according the plaintiff notice and opportunity to be heard. See, Civ. R. 12(b)(6)

All parties below submitted briefs in the 11th Circuit Court of Appeals except Florida. The Court of Appeals on January 13, 1999 in a per curium unpublished opinion, without prior notice of the members of the appeal court panel or the appeal's placement on the non-argument calendar, affirmed the district court's dismissal "with prejudice" and adopted its rationale by reference to the district court's orders of dismissal. App. x. On petition for rehearing or rehearing *en banc* the appeals court denied the relief by order entered March 8, 1999. App. xi. This Petition for Writ of Certiorari is timely sought from the appeals court affirmance.

REASONS FOR GRANTING WRIT

I.

Next only to slavery, apartheid exploited the economic interests of Africans descended of slaves (blacks) in this country. One aspect of that exploitation is featured in this case: the unequal treatment of black teachers in salary and other terms, conditions and benefits of employment in the public schools of Florida. Eliza (*nee:* Roulhac) Davis Oliver was one of the thousands of black teachers -- mostly women -- who were paid one-half (1/2) the salary rates of Caucasian (white) teachers during the era of apartheid[9] and has never, to this day, received any restitution for the taking. Apartheid was -- as described by this Court in *Swann* and lived by many blacks -- an "evil" system designed to perpetuate the social and economic[10] subjugation of blacks and to validate the myth that blacks are inferior to whites and therefore their labor of less value.

Presented are important questions impacting hundreds of thousands of aging black teachers mostly from the southern States who were exploited and affecting the liability of Florida (and other

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[9] For a compilation of Florida's laws on apartheid, see Murray, *State Laws on Race and Color* 77-83 (1997)

[10] Under this system of racial separation known as "segregation", racist laws and economic barriers kept blacks from amassing wealth and challenging whites' economic dominance in any significant way. As a result most of the wealth in this country remains in the hands of whites. See, Anderson, *Black Labor, White Wealth* (1994) [A discussion of how black labor from slavery to the present helped lay the wealth building foundation of this country.]

'apartheid practicing' States[11]) to provide billions of dollars in restitution and reparations to those black teachers or their beneficiaries for the taking. Simply stated the issues for review are (1) does the statute of limitations excuse the performance of an "affirmative duty" by Florida's educational officials, whether State or county, mainly under the 13th and 14th Amendments to remedy this taking long after this Court ordered desegregation of schools in 1954 and equalization of past employment discriminatory practices *circa* 1940; (2) does the 11th Amendment excuse Florida (but not its School Boards) from liability; and (3) does a direct action lie under the 13th and 14th Amendments by an aggrieved black teacher (or her estate) to compel performance of the "affirmative duty"?

II. SUMMARY OF REASONS

Reasons for granting this Petition for Writ of Certiorari are summarized as follows: (1) to compel performance of previous Court orders directing the elimination of *"all* vestiges" or remnants of the past effects of laws, policies, practices, or customs which existed during the era of school segregation and imposing an "affirmative duty" upon Florida's educational officials to remedy their failure to provide restitution and reparations to their black teachers for unequal salaries and other economic losses beginning in 1885 and continuing

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[11]In addition to Florida, in 1954 there were 13 other 'apartheid practicing' States. In the South: Alabama, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Texas, Virginia, and West Virginia. Outside the South: the District of Columbia and Maryland. All total there were some 17 States that had dual educational systems at some level. Delaware, Kansas and Missouri are omitted because they were not a part of a Compact of States who were intent upon perpetually delaying and avoiding integration of schools and for the most part voluntarily complied. See, "Note on Regional Compact -- Education" [a/k/a the Southern Regional Education Program (executed: 02/08/48)], Murray at 666.

until today[12]; (2) to reaffirm this Court's commitment to the Nation's strong public policy of creating a "color blind" society wherein no group is discriminated against or exploited because of their race or color; (3) to prevent the unjust enrichment of Florida (and other 'apartheid practicing' States) in the billions of dollars for the exploitation of hundreds of thousands of black teachers or their beneficiaries; (4) to clarify any confusion in the case law that (a) would deny a citizen descended of African slaves a direct private cause of action under the self-executing provisions of the 13th Amendment ("badges and incidents of slavery") and the 14th Amendment (privilege and immunities clause) or any citizen's right under any self-executing provision of the Constitution to such a direct action; or (b) would immune a State from liability under the 11th Amendment if it violated express constitutional provisions which prohibits a State's action[13]; and (4) to prevent and correct the district court's departure from recommended procedure and its exercise of excessive jurisdiction in adjudicating motions to dismiss under Civ.R. 12(b)(6) which has resulted in the denial of due process rights to the Oliver Estate and a miscarriage of justice.

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[12] "School boards ... operating state-compelled dual systems were nevertheless clearly charged with the *affirmative duty* to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. *Green v. County School Bd. of New Kent Cty., Va.*, 391 U.S. 437, *437-438*, 88 S.Ct. 1689, *1694* (1968); "If school authorities fail in their affirmative obligations under [*Brown*] ... judicial authority may be invoked. *Once a right and a violation have been shown, the scope of a district court's equitable power to remedy past wrongs is broad,* for breath and flexibility are inherent in equitable remedies." *Swann*, 402 U.S. at 15, 91 S.Ct. at 1267 (Emphasis supplied)

[13] Petitioner's position is simply that a State acts at its peril and lacks 11th Amendment immunity because a prohibited act cannot be immunized for that act is in law a void act or nullity and immunity is without a legally recognizable act upon which to operate, *i.e.* a State has no sovereignty in constitutionally prohibited areas.

III. STATEMENT OF REASONS

A.

'Integration' did not and has not created the equality that this Court envisioned when it struck the final death blow in 1954 to the doctrine of "separate but equal" announced in the infamous case of *Plessy v. Ferguson*[14]. Challenged in this case is a district court's refusal to command Florida and its School Boards to perform their "affirmative duty" to a black teacher by providing restitution and reparations to the teacher's estate for unremedied past acts of discrimination resulting in loss of pay and other economic losses. Petitioner Oliver Estate's civil rights action was dismissed "with prejudice" because the district court allowed the respondents' (whose liability is beyond question) immunity by way of the statute of limitations and 11th Amendment defenses.

From this Court's segregation cases one clear and loud principle was espoused: Integration of public schools meant *more than* eliminating "separate but equal" schools, but also remedying the results of past acts of segregation. One major discrimination during apartheid in education in Florida (and across the South) was in employment: salaries of black teachers on average was 50% (fifty percent) less than white teachers and this gross salary was further reduced by indirect discriminatory terms and conditions not applicable to white teachers causing black teachers additional current and *prospective* economic losses.

While reasons for this certiorari review are couched in legal terms of the nonavailability of the statute of limitations and the 11th Amendment immunity defenses to the Florida and its School Boards, the Court is presented with yet another dereliction of an "affirmative duty" by a southern State to avoid accountability for its misdeeds during the period of *de jure* and *de facto* segregation in its public schools. The Court is asked as a last resort to reject the idea that these defenses bar restitution of the ill-gotten gains by Florida and its School

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[14] 163 U.S. 537, 16 S.Ct. 1138 (1886)

Boards at the expense of its victim, a loyal black teacher representative of the legion of others who unselfishly taught against all odds in the substandard schools maintained for black children trying to salvage the this valuable human capital for the great task of preserving our Nation's cherished democratic values, ideals and principles..

Salary equalization was effectively ordered by this Court sometime in 1940 by refusing to hear a 4th Circuit case striking down unequal salary schedules as in violation of the 14th Amendment. See, *Alston v. School Bd. of City of Norfolk*, 112 F.2d 992 (4th Cir.), *cert. den.*, 331 U.S. 693, 61 S.Ct. 75 (1940); Accord: *McDaniels v. Bd. of Public Instr., Escambia Cty., Fla.*, 39 F.Supp. 638 (D.C., N.D. Fla., 1941). While discriminatory salary schedules were struck down, southern federal courts refused to grant back salary. See, *e.g. Thomas* [Salary equalization case. Back pay denied, teacher estopped "by accepting payment of his salary under (discriminatory salary) schedules, without having made protest prior to filing of complaint ... ."][15]

Elimination of past "vestiges" of *de jure* and *de facto* segregation was ordered by this Court in the 1954 *Brown* case. Most recently in *United States v. Fordice*[16] this Court reiterated that a State stands in continuous violation of the 14th Amendment if it does not eliminate past vestiges of educational apartheid and make "aggrieved individuals whole."

Although this Court had imposed an "affirmative duty" in *Green, Swann*, and other desegregation cases to do so, Florida never remedied this salary inequity when the State reluctantly integrated its schools in 1971. This Court without dissent made crystal clear that a State which

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[15] Counsel of record in all the "salary equalization" cases across the South was the late Justice Thurgood Marshall then general counsel with the NAACP and the late D.C. Circuit Court Judge Spottsford W. Robinson, III. This case was filed some 50 years after the dismissal of the salary equalization case against the Hillsborough County School Board. *Turner v. Hillsborough County Bd. of Public Instr., infra*, App. v. [Unfortunately there is no district court record that this case was ever filed in 1941 only newpaper accounts.]

[16] 505 U.S. 717, 112 S.Ct. 2727 (1992)

does not remedy *all* past vestiges of segregation would "remai[n] in violation of the Fourteenth Amendment" until equality is accomplished. See, *Fordice*, 505 U. S. at 728, 112 S.Ct. at 2735. There were no exceptions carved out for any State based upon an elapse of time, especially for a former Confederate State like Florida with its egregious history of slavery and apartheid, and its open, hostile and notorious defiance "by any means necessary" from 1954 to 1971 of this Court's orders to integrate is schools which included an "affirmative duty" to provide restitution to black teachers for unequal salaries and attendant economic losses suffered. Because respondents were derelict, restitution now may well cost them in the hundreds of millions of dollars. Restitution to these innocent victims of apartheid which is long past due.

Was Florida excused from making black teachers *economically* equal to white teachers after apartheid ended in its schools? Were black teachers to be humbly thankful for the 'benevolence' of Florida and its School Boards for partially performing its "affirmative duty" in the *prospective* equalization of salaries and benefits and forgo restitution for past economic inequities which would adversely affect their *future* economic condition and well-being? Is yet another independent court action really necessary to perfect that preexisting duty?

Denying equalization to black teachers only validates the "evil" system of apartheid and impresses a "badge of slavery" or inferiority even today upon those dedicated and hardworking black teachers like Mrs. Oliver. Unless restitution is decreed by this Court black teachers of the apartheid era will be branded forever as inferior laborers never to receive the true value of their sacrificial labor, no less a slave than their African forebears.

It dishonors the victims of the apartheid atrocities, both living and dead, to permit such a miscarriage of justice. Moreover, apartheid whether practiced in South Africa or in the southern United States is a "crime against humanity" devoid of any limitations period. Unjust enrichment of a State by exploiting its own taxpaying citizens who just happen to be African slave descendants is not immune constitutionally or otherwise.

So long as any black teacher in Florida or elsewhere has been denied such restitution a "badge and incident of slavery" exists; and if the teacher is deceased that "badge" is impressed upon her beneficiaries in like manner for generations to come. There can be no statute of limitations or constitutional immunity to such reprehensible conduct and race-based behavior by Florida and its School Boards.

B.

Dating back to the Civil War [13th, 14th, and 15th] Amendments enacted between 1866 and 1875 and their declaration that blacks are citizens too, it has been the strong public policy of this Nation to establish in word and deed the equality of whites and the newly freed blacks.[17] Review by this Court is compelled in the public interest because there exist in this case a blatant violation of that public policy which enacted and sustains our civil rights statutes.

Over 50 years ago in *Hurd v. Hodge*, 334 U.S. 24, 68 S.Ct. 847 (1948) this Court in striking down restrictive covenants in the District of Columbia under a federal civil rights statute held that:

> even in the absence of the [civil rights] statute, ... enforcement of restrictive covenants ... is *judicial action contrary to the public policy of the United States* ... The power of the federal courts ... is at all times exercised *subject to the restrictions and limitations of the public policy* of the United States as manifested in the Constitution, treaties, federal statutes and applicable legal precedents. Where enforcement ... would be violative of that policy, it is the *obligation of courts to refrain from such exertions of judicial power.* 334 U.S. at 34-35, 68 S.Ct. at 852-853 (Emphasis supplied)

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[17] "(I)n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." *Plessy*, 163 U.S. at 560, 16 S.Ct. at 1146 (Justice Harlan, dissenting). See 42 U.S.C §§ 1981, 1982

Allowing Florida and is School Boards immunity under the statute of limitations defense for its race-based discriminatory actions against Ms. Oliver [and ostensibly *all* black teachers in Florida (and elsewhere) between 1885 and 1971] would be "judicial action contrary to the public policy of the United States" and the district court in this case should be so reminded by this Court. *Id.*

We must never forget that this strong public policy is grounded in the fundamental belief that our Constitution is blind to color and class and that no group of people shall ever again be subjugated to slave status or suffer the "badges and incidents" thereof so long as this Republic survives. This strong public policy has been ordained and consecrated by the sacrifice of the lives of American citizens, both black and white, who fought to free the slaves, only later to see arise the "evil" apartheid system which has taken generations to eliminate and remnants of which remain even today.

While involving less restraint, apartheid was still constructive slavery and resulted in "badges and incidents of slavery." The "evil" system of apartheid must not win out in the end by denying its victims -- such as Mrs. Oliver and the legions of other black teachers -- what is rightfully theirs because of a passage of time or by an incorrect interpretation of 11th Amendment immunity which is abrogated under these circumstances.

It is illogical to think that a State would be immune for violation of the very constitutional prohibition that it agreed to abide by. This case does not represent an isolated discriminatory act by an innocent State of underpayment to a single black teacher, but the violation of a constitutionally based right on a massive and pervasive scale involving nearly every black teacher who taught in the 14 (fourteen) 'apartheid practicing' States until 1971 and benefiting those States by

billions.[18] The confiscatory actions complained of in this case were done with utter contempt for and disregard of the Constitution, its rule of law, and the mandates of this Court which prohibits a State from taking a citizen's property rights under circumstances which deny due process and equal protection of its laws and which also constitutes a "badge and incident of slavery". These were not negligent acts, but were intentional and unjustifiable actions done in the name of preserving a privilege of one race to the economic detriment of another.

Any further delay in providing economic justice to Mrs. Oliver's Estate and other black teachers would deny those still alive the personal enjoyment of their labors and would give victory to those who perpetuated the "evil" system of apartheid and those who today may still harbor -- consciously or subconsciously -- the idea that black labor is somehow inferior. As is often declared, "justice delayed is justice denied."

Finally, in taking this case the Court will surely silence those critics, especially within the black Civil Rights community, who consider this Court as insensitive to the plight of blacks for civil rights in education because this Court's decisions have redefined "affirmative action" and restricted its original remedial applications. Even with those criticisms, this Court has never retreated from the Court's historical commitment to a "color blind" society with neutral laws devoid of classifications which invidiously discriminate. In surveying this Court's decisions on civil rights, it cannot be said that this Court has ever excused on common law or constitutional immunity grounds a State's performance of its "affirmative duty"

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[18] One might inquire as to the whereabouts of the 'savings' resulting from the exploitation and misallocation of educational funds by Florida relative to its black teachers and students. Taxpaying parents of black students did not receive any refund nor did black teachers receive any tax credits. Most likely the 'savings' went to help subsidize white student education since Florida, for example, in 1941 spent 2.5 times more per white student than per black student. See, Davis, *A Half-Century of Struggle for Freedom in Florida* 182 (1981) This practice of underfunding black schools continued until full 'integration' was ordered by this Court in 1971.

under the 14th Amendment to remedy past acts of discrimination or rejected black victims' right to recover their *individual* claims against State-sponsored race-based acts.[19]

By reviewing this case, the Court would say to the affected blacks (and white citizens alike who abhor the unequal treatment of blacks during the apartheid era) that this Court condones no deliberate, unjustifiable or inexcusable neglect of the performance of an "affirmative duty" ordered by this Court to eliminate all past vestiges of apartheid in Florida (and elsewhere) and to remediate the wrongs done. Moreover, this Court once again has an opportunity to state unequivocally that those States and their school boards who were responsible for the economic exploitation of black teachers during the apartheid era shall not escape accountability now or in the foreseeable future. There is no reward for flaunting our Constitution!

C.

Under circumstances such as this wherein a State government has exploited a citizen because she is descended of African slaves and has unjustly enriched itself by millions, that State cannot escape liability by arguing either a time-bar or constitutional immunity. Unequal treatment started in 1885 when Florida's Constitution decreed the segregation of schools: "White and Colored children shall not be taught in the same school, but *impartial provision shall be made* for both". Fla. Const., Art. XII, §12 (1885) (repealed) (Emphasis supplied)

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[19] Surely if black teachers are entitled to restitution for unequal salaries and other economic injury because of the apartheid system, then black students who were under- and mis-educated in the substandard school systems may well have reason to complain and seek restitution and reparations from Florida which spent 2-1/2 times more on white students than it spent on black students during the apartheid era. This case speaks broadly to restitution in all areas where economic losses occurred because of the State-sponsored apartheid laws. Whether there is a right and remedy should not be left to conjecture or summary federal court proceedings in this important civil rights area of the Nation's life.

It is ironic that Florida's public school system established by black legislators during the "Reconstruction Period" following its defeat in the Civil War[20] was to become a vehicle for exploitation of the very race of people who created a system of public education for the common good of both blacks and whites. Will this Court allow Florida to avoid its "affirmative duty" to remedy its mistreatment of its black teachers and be unjustly enriched by hundreds of millions of dollars for its unconscionable conduct which not only was in violation of the U.S. Constitution, but violated its own State's Constitutional provision providing that "*impartial provision* shall be made for both" "Colored and White children" in segregated facilities? (Emphasis supplied)

Not only do the living black teachers, many of whom are fast approaching death, and most of whom are retired and between 60-100 years of age, cry out for this Court to correct this economic injustice, but the throngs of dead teachers whose beneficiaries await the final restitution and reparation for the ill-gotten gains of Florida and other 'apartheid practicing' States cry out like rocks (in their silence) for economic justice. There is in this case a *moral* imperative as well as important and unresolved legal issues of constitutional dimensions which it is desirable and in the public interest to have addressed by this Court. Black teachers of the apartheid era represented a corps of mostly "unsung heroes" who, like Mrs. Oliver believed that with God's help, a trained mind produces a willing servant to the cause of the upbuilding of the masses. It cannot be argued that there is no greater goal than this: preparation and sacrifice for the common good.

D.

This Court can use this case as the vehicle to finally clarify the

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[20] There was no public education for whites or blacks in Florida prior to this time. Florida's first State Superintendent of Public Instruction was a black, Jonathan Gibbs, who served as Secretary of State during Reconstruction and laid the basis for the public school system that exists today. "Gibbs standardized the textbooks, chartered a uniform course of study, and brought order our of a very chaotic state of affairs. At the time, about half of Florida's population was Black". Davis at 131

confusion in the 11th Amendment jurisprudence that constitutional provisions which prohibit State conduct may or may not be immune by the 11th Amendment, an important issue which the Court has addressed indirectly and generally but never expressly resolved. See, *Ex Parte Virginia*, 100 U.S. 339, *345-348*, 25 L.Ed. 676 (1880) [13th and 14th Amendments being directed at the States are "restrictions upon State power ... and to enforce against State action, however, put forth ... is no invasion of State sovereignty."]; *Prout v. Starr*, 188 U.S. 537, 23 S.Ct. 398 (1903) [11th Amendment not "invincible barrier" to judicial inquiry where the prohibitory provisions of the contract impairment clause and the 13th or 14th Amendment are concerned.] *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S.Ct. 266 (1972) [State's 11th Amendment immunity is overridden by congressional allowance of private enforcement under §5 of the 14th Amendment.]; *Milliken v. Bradley*, 433 U.S. 267, 91 S.Ct. 1267 (1971) [Enforcement allowed against State to pay money damages in a school desegregation case under the *Eldelman's* "prospective compliance exception"; abrogation argument made but not reached.]; *Ravinovitch v. Nyquist*, 434 U.S. 881, 97 S.Ct. 2862 (1976) [Abrogation was core issue but appeal dismissed.] But see, *Santiago v. N.Y. State Dept. of Correctional Svcs.*[21], 945 F.2d 25, *28-32* (2nd Cir., 1991) [Suit for retroactive damage against States under §1 of the 14th Amendment is immunized by the 11th Amendment relying upon these Court cases: *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 104 S.Ct. 900 (1984) and *Edelman.*]

All citizens descended of African slaves are affected by the resolution of the abrogation issue, *i.e.* does the 13th Amendment and the privilege and immunities clause of the 14th Amendment being self-executing, create a private right of action directly under the Constitution or not? And if so, is a State immune from damages by the

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[21] "The question squarely before us in this appeal is whether a person may bring a suit for retroactive damages against a state or a state agency in federal court directly under Section 1 of the Fourteenth Amendment, despite the principle of state sovereign immunity embodied in the Eleventh Amendment. In answering it, we find [plaintiff's] argument that 'the Fourteenth Amendment, *ex proprio vigore* work a *pro tanto* repeal of the Eleventh Amendment ...' to be too facile." *Santiago.* (Footnote omitted)

11th Amendment? These Amendments whose initial purpose was the protection of blacks still mean and can accomplish what they were originally intended to do, *i.e.* prevent a State or a State actor from discriminating against blacks in its laws, policies and practices. Neither time nor sovereign immunity stands as a defense to such discriminatory State action when called to account by an aggrieved citizen for its transgressions in the federal courts.

E.

The district court's decision dismissing the action "with prejudice" was contrary to the course of procedures applicable to motions to dismiss and from well established principles of law which has the effect of depriving the Oliver Estate of a constitutional right and resulted in a miscarriage of justice, *i.e.*, the Oliver Estate has been prevented from litigating its federal civil rights claims. In dismissing this case the district court improperly construed the applicable law and failed to follow or apply the law which were actions in excess of its jurisdiction and this Court should review this jurisdictional excess by way of its supervisory authority over federal courts pursuant a writ of certiorari or by way of a writ of mandamus.

In these Civ. R. 12(b)(6) dismissal proceedings, the district court applied the wrong standard of review. It held that it "need not explicitly respond to each and every theory advanced in the pleading" (App. viii) contrary to this Court's "accepted rule" enunciated over 41 years ago in the 1957 *Conley* case and found that there were no "affirmative acts of inequitable conduct" [App. viii] by Florida or its School Boards based upon the district court's reading of the complaint allegations without benefit of an evidentiary hearing which is impermissible on a Civ. R. 12(b)(6) dismissal motion.

Moreover, the district court failed to properly apply the well established equitable principle of promissory estoppel in federal and state common law which prevents use by the government of the statute of limitations defense. See, *Glus v. Brooklyn Eastern District Terminal*, 35 U.S. 231, 79 S.Ct. 760 (1959) [Statute of limitations barred by estoppel]; *Daniel v. Sherrill*, 48 So.2d 736, 740 (Fla., 1950) ["(E)quitable estoppel arises from the following conduct of the State (of Florida): *** Its failure to refund or offer to refund" illegally

collected taxes.] Such determinations by the district court effectively violated the Oliver Estate's due process rights to access the federal court for determination of statutory and constitutional civil rights claims and warrants this Court's review by certiorari or mandamus.

F.

Issuance of the writ of certiorari is therefore appropriate (1) to compel compliance with the Court's mandates regarding the equalization of salaries and other economic benefits during the apartheid era in public education in Florida, (2) to prevent the unjust enrichment of Florida at the expense of its black teachers, (3) to affirm the right of citizens to direct private actions under the Constitution's self-executing provisions; (4) to declare, once and for all, what is clearly expressed in the reasoning of this Court's cases defining 11th Amendment jurisprudence, that States are not immune when they act in violation of a constitutional prohibition; and (5) to review a district court's decision-making process which departed from established principles of law governing Civ. R. 12(b)(6) dismissal motions and resulted in a violation of the Oliver Estate's due process rights and in a miscarriage of justice.

CONCLUSION

Restitution for the exploitation of black teachers during the apartheid era in Florida's public education system is what this case is all about. Abundant reasons grounded in law, equity, public policy and humanitarian principles all co-exist and coalesce as the foregoing dissertation demonstrates to support this Petition for Writ of Certiorari.

Of paramount importance in this case is the lingering and unresolved question of economic justice for black teachers of the apartheid era under our federal civil rights laws. Its resolution will affect directly or indirectly every American citizen alive who is descended of African slaves whether they personally lived during the apartheid era or not.

Presented also is an unresolved question in 11th Amendment immunity jurisprudence, that of the right of a citizen under any self-executing provisions of the Constitution to a direct private action against a State when it violates a constitutional prohibition causing economic losses to a citizen. This Court has held that Congress can create such private actions under its constitutional powers as those granted in the 14th Amendment.

Exercise of this Court's supervisory authority or a writ of mandamus is also required to correct the district court's departure from normal procedure in Civ. R. 12(b)(6) dismissal proceedings which resulted in a violation of the Oliver Estate's due process rights and a miscarriage of justice. This Petition is therefore respectfully submitted for favorable consideration.

ELIZA DAVIS OLIVER ESTATE
T. Carlton Richardson, P.R.
Petitioner *Pro Se*
1505 Pennsylvania Avenue, SE
Washington, DC 20003-3117
202/546-3505

APPENDIX TO WRIT

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ELIZA DAVIS OLIVER [ESTATE], by its Personal Representative, T. CARLTON RICHARDSON,

Plaintiff,

vs. No 96-1364-CIV-T-24(B)

STATE OF FLORIDA, ET AL.

Defendants

_____/

ORDER

This cause is before the Court on (i) Defendant School Board of Washington County's Motion to Dismiss with Prejudice (Doc. No. 17, March 17, 1997); and (ii) Defendant State of Florida's Motion to Dismiss Amended Complaint (Doc. No. 18, filed March 20, 1997). Plaintiff filed responses to both motions to dismiss on March 28, 1997 (Doc. Nos. 20 and 21). For the reasons set forth below, the Court agrees with Defendants' motions and grants the dismissal of this case.

FACTS

Plaintiff commenced this action, in his capacity as the Personal Representative of the Estate of Mrs. Eliza Davis Oliver, on July 11, 1996 (Doc. No. 1). According to Plaintiffs Amended Complaint (Doc. No. 15, filed February 20, 1997), Mrs. Oliver, an African-American, was employed as a school teacher by the school boards of Washington, Marion, Citrus and Hillsborough Counties, from 1921 through and until her retirement in 1973. The Amended Complaint alleges that Mrs. Oliver, from 1921 until 1943, was paid a salary fifty percent (50%) or less than that of comparable Caucasian teachers. See Amended Complaint ¶7.

According to the Amended Complaint, this system of disparate treatment ended in 1943 at the behest of a federal court order. Id. Following the 1943 order, Mrs. Oliver continued to sustain damage as a result of the state's reluctance to implement desegregation (as required by Brown v. Bd. of Education, 347 U.S. 483, 74 S.Ct. 753 (1954)), including substandard working conditions, second-hand books, and inadequate equipment, which situation was not remedied until desegregation occurred in 1966. Id. at ¶¶ 12, 15. Plaintiff claims that this disparate treatment constitutes a violation of rights guaranteed to Mrs. Oliver by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution, the Due Process and Takings Clauses of the Fifth Amendment to the U.S. Constitution, and the Civil Rights Acts. The Court construes this claim as a request for relief under 42 U.S.C. §§1981, 1982 and/or 1983.

Defendant School Board of Washington County moves to dismiss on the grounds that Plaintiff's action is barred by the statute of limitations. Defendant State of Florida argues suit against the state is barred by the Eleventh Amendment, and also agrees with Defendant School Board of Washington County that the statute of limitations effectively precludes consideration of this case.[1]

DISCUSSION

In deciding a motion to dismiss, the district court is required to view the complaint in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232 (1974). A complaint should not be dismissed for failure to state a cause of action "unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson,

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[1] Although the Court does not dismiss this case on Eleventh Amendment grounds, there is little doubt such dismissal would be warranted with respect to Defendant State of Florida. See, e.g., Edelman v. Jordan,, 415 U.S. 651, 664, 74 S.Ct. 1347, 1356 (1974) (§ 1983 suits against state barred by Eleventh Amendment except to extent plaintiff seeks prospective injunctive relief).

355 U.S. 41, 45-46 (1957); Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991). The Federal Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." Conley, 355 U.S. at 47. All that is required is "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2).

Viewing the Amended Complaint in a light most favorable to Plaintiff, the Court cannot overlook the statute of limitations defense raised by Defendants. The statute of limitations for Sections 1981, 1982, and 1983 cases is a question of state law, and is generally drawn from a state's statute of limitations for a personal injury claim. Goodman v. Lukens Steel Co, 482 U.S. 656, 660-62, 107 S.Ct. 2617, 2620-21 (1987); Wilson v. Garcia, 471 U.S. 261,276-79, 105 S.Ct. 1938, 1947-49 (1985); Scheerer v. Rose State College, 950 F.2d 661,664 (10th Cir. 1991). In Florida, the statute of limitations for a personal injury claim is four (4) years. Florida Statutes, §95.11(3). Federal law requires that the limitations period begins to run when the facts supporting the cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights. Mullinax v. McElhennev, 817 F.2d 711, 716 (11th Cir. 1987), quoting Calhoun v. Alabama Alcoholic Beverage Control Board, 705 F.2d 422, 425 (11th Cir. 1983).

In the present case, it was apparent, or should have been apparent, to Mrs. Oliver that she was being paid less than Caucasian teachers by or before 1943, the year in which, -- according to Plaintiff's Amended Complaint, -- a federal court ordered the end of the system of disparate wages. More telling is the following excerpt from Plaintiff's response to Defendant School Board of Washington County's motion to dismiss:

> In 1937, black teachers in Florida who numbered about 3,000 at the time, decided to launch a program of equalization of salaries and educational facilities through its Florida State Teachers' Association. Davis, ii, 132 [sic] After petitions to various school boards throughout Florida failed, some lawsuits in the federal courts of Florida were filed. The first suit had as its plaintiff, Vernon McDaniels whose case was

won in 1941. See, McDaniels v. Bd. of Public Instr., Escambia Cty., Fla., 39 F. Supp. 638 (DC, ND, Fla., 1941.) [Denial of equal salary violated Equal Protection Clause.] In 1941, the Florida Constitution still contained Art. 12, Sec. 12 regarding segregated education. Id. at 639. Hilda Turner was the plaintiff in the Hillsborough County case at Tampa. Turner v. Hillsborough County Board of Public Instruction, No. 41- (Barker, J., presiding) Davis, at 136. See, Hawes, "Teacher Fought For and Won Equal Pay", The Tampa Tribune (03/31/90), for the history of Hillsborough County litigation.

Plaintiff's Opposition to Defendant's (School Board of Washington County) Motion to Dismiss (Including Request to Exceed Page Length) (Doc. No. 20, filed March 28, 1997) at p. 7. Thus, the facts supporting a claim based on disparate treatment were readily apparent, or should have been readily apparent, to Mrs. Oliver as early as 1937. In any event, the Court believes that wages and other classroom disparities, see, e.g., Amended Complaint, ¶115 ("second-hand books and inadequate equipment or teaching aids"), were common knowledge by the landmark decision of Brown v. Bd. of Education. Even assuming (which this Court does not), as Plaintiff argues, that the wrong perpetrated upon Mrs. Oliver was continuous, permitting the tolling of the limitations period, any continuity came to an end in 1973 when Mrs. Oliver retired. Even allowing the most liberal reading of the allegations contained in the Amended Complaint, there exists no set of facts which could convince this Court that Mrs. Oliver did not know, and could not have known, until July 12, 1992, that there previously existed a disparity in her pay and working conditions.

Moreover, the Court finds that the aforementioned reasoning applies with equal force to the action against Defendants School Board of Marion County, School Board of Citrus County, and School Board of Hillsborough County.

The Court therefore dismisses this case with prejudice and with respect to all Defendants.

Accordingly, it is ORDERED AND ADJUDGED that

(1) Defendant School Board of Washington County's Motion to Dismiss with Prejudice (Doc. No. 17) and Defendant State of Florida's Motion to Dismiss Amended Complaint (Doc. No. 18) are GRANTED. This case is DISMISSED WITH PREJUDICE.

(2) The Clerk of the Court is directed to CLOSE this case.

DONE AND ORDERED at Tampa, Florida, this 21st day of May, 1997.

/s/ Susan C. Buckew
SUSAN C. BUCKLEW
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ELIZA DAVIS OLIVER [ESTATE], by its Personal Representative, T. CARLTON RICHARDSON,

Plaintiff,

vs. Case No. 96-1364-CIV-T-24(B)

STATE OF FLORIDA, ET. AL

Defendants

_____/

ORDER

This cause comes before the Court for consideration of the following motions: (i) Plaintiff's Motion to Reconsider or Clarify Order Dismissing Action (Doc. No. 30, filed June 2, 1997); (ii) Plaintiff's Ex Parte Request to Allow Filing of Plaintiff's "Response... and Cross-Motion for Sanctions" (Doc. No. 31, filed June 2, 1997); and (iii) Plaintiff's Memorandum to the Court Re: Case Status (Doc. No. 33, filed November 4, 1997). Plaintiff also filed a Notice of Supplemental Authority (Doc. No. 32). Defendants did not file a response to any of the above motions.

With respect to the motions for reconsideration, Plaintiff has failed to present adequate grounds for reconsideration. There are three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. Sussman v. Salem, Saxon & Nielsem P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994). Plaintiff's motions fail to present any of these grounds, and instead argue that the Court did not explicitly address each and every theory (e.g., continuing affirmative duty, estoppel, exceptions to Eleventh Amendment immunity), advanced in

Plaintiff's response. Plaintiff is mistaken: this Court need not explicitly respond to each and every theory advanced in the pleadings.

In any event, the Court did respond to Plaintiff's continuity theory, and explicitly rejected it insofar as Mrs. Oliver retired in 1972, see Order (Doc. No. 28), p. 4. Moreover, the Court's ruling on the limitations issue makes a further study of the Eleventh Amendment unnecessary, see id., p. 2 n. 1.[1] As for Plaintiff's estoppel argument, this theory requires affirmative acts of inequitable conduct which effectively conceal the cause of action from the plaintiff. See, e.g., Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231,234, 79 S.Ct. 760, 762 (1959) ("The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage.") (emphasis added). Far from ever alleging or asserting any specific affirmative acts, Plaintiff has suggested in its response that the disparate treatment in salaries was readily apparent to Mrs. Oliver as early as 1937, see id., p. 4. Plaintiff's motions for reconsideration are therefore without merit.

As for the Request to Allow Filing of Plaintiff's "Response... and Cross-Motion for Sanctions," Plaintiff acknowledges this request is relevant only if the Court grants the motion to reconsider; otherwise the request is rendered moot by this Court's Order dismissing the case.

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[1] In this respect, the Court nevertheless finds Plaintiff's arguments unavailing. The law is clear that the Eleventh Amendment precludes a suit against the state for money damages. See Edelman v. Jordan, 415 U.S. 651, 668, 94 S.Ct. 1347, 1358 (1974). The Supreme Court's decision in Idaho v. Coeur d'Alene Tribe, -- U.S. —, 117 S.Ct. 2028 (1997), does not alter this fundamental precept of our Supreme Court's sovereign immunity jurisprudence.

Accordingly, it is ORDERED and ADJUDGED that:

(1) Plaintiff's Motions to Reconsider (Doc. Nos. 30 and 33) are DENIED.

(2) Plaintiff's Ex Parte Request to Allow Filing of Plaintiff's "Response... and Cross-Motion for Sanctions" (Doc. No. 3 I) is DENIED AS MOOT.

DONE AND ORDERED at Tampa, Florida, this *24th* day of February, 1998.

/s/ Susan C. Bucklew
SUSAN C. BUCKLEW
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2329
Non-Argument Calendar

D.C. Docket No. 96-1364-Civ-T-24(B)

T. CARLTON RICHARDSON, as personal representative for the Estate of Eliza Davis Oliver,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, ET. AL

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(January 13, 1999)

Before ANDERSON and MARCUS, Circuit Judges,
and FAY, Senior Circuit Judge.

PER CURIAM:

The dismissal of this action is affirmed for the reasons set forth in the Orders of the district court dated May 21, 1997 and February 24, 1998.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-02329

ELIZA DAVIS OLIVER ESTATE, by its Personal Representative, T. CARLTON RICHARDSON,

Plaintiff-Appellant,

versus

STATE OF FLORIDA, SCHOOL BOARD OF HILLSBOROUGH COUNTY, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, ___ F.2d ___)

Before: ANDERSON and MARCUS, Circuit Judges, and FAY, Senior Circuit Judge.

PER CURIAM: The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
/S/ PETER FAY
UNITED STATES SENIOR CIRCUIT JUDGE